LABOUR DEPARTMENT

The 26th September, 1994.

No. 14/13/87-6Lab./478.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court II, Faridabad in respect of the dispute between the workman and the management of M/s Escorts Ltd. Faridabad *v.* Sita Ram Gaur.

IN THE COURT OF SHRI U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II, FARIDABAD.

Reference No. 40/90.

between

THE MANAGEMENT OF M/S ESCORTS LTD. (MOTORCYCLE & SCOOTER DIVISION, 19/6, NEW PAINT SHOP DEPARTMENT, FARIDABAD

versus

THE WORKMAN NAMELY SHRI SITYA RAM GAUR S/O SHRI RAM PARSAD GAUR VILLAGE FIROJPUR POST OFFICE BAGHOLA, TEHSIL PALWAL, DISTRICT FARIDABAD.

Present :

Shri Duli Chand, for the workman.
Shri S. S. Sethi, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,—*vide* Haryana Government Endorsement No. 6183--88 dated 15th February, 1990 :-

Whether the termination of service of Shri Siya Ram Gaur is legal and justified ?

If not, to what relief, is he entitled to ?

2. The case of the workman is that he was appointed as helper by the management on 17th February, 1988 and had been working upto 13th July, 1989 continuously, diligently, without any break and without any complaint of dereliction of duties, and his record of service has been unblemished throughout. His last drawn salary was Rs. 650 per month. All of sudden in the evening of 13th July, 1989 he was told by the department manager that his services were no more required. The workmen junior to him were still working. He was appointed on the basis of being a handicapped person. The termination of his services effected in the manner mentioned above is illegal. He is thus, entitled to be reinstated into service with full back wages and continuity in service.

3. The management submitted written statement dated 20th February, 1990 stating therein that the reference is bad in law as the *onus* to prove that the termination of services of the workman was legal and justified was wrongly put on the management. Besides this, the workman was a casual worker engaged on daily wages for the days his services were required. He had no right to continue in employment. That being so, the question of termination of his service could not be the subject matter of adjudication. It was next mentioned that the management had employed about 2500 permanent workmen. The casual workers were employed depending on requirement such as to cover abnormal absenteeism and to meet temporary production targets etc.

The present workman had firstly called on their factory in search of employment and submitted an application dated 30th May, 1983 for the post of helper and he was offered employment,—*vide* letter dated 7th June, 1983 purely on temporary basis for a period of three months on daily wages of Rs. 14.80 per day. Secondly the workman had worked as helper in mail room on temporary basis on daily wages for a period of two months with effect from 1st March, 1985. Thirdly the workman had called at their factory in January, 1988 and had submitted an application for the post of helper and he was employed purely and temporary basis for a period of 3 months on daily wages of Rs. 23 per day. This temporary engagement of the workman was extended from time to time to meet the temporary exigencies of work and his temporary services were discontinued from the close of the working hours of 13th July, 1989 and he was informed of the same but he had refused to accept the same. He is thus, not entitled to any relief.

3A. The workman submitted rejoinder dated 7th December, 1991 re-asserting the previous averments and denying the averments of the management.

4. On the pleadings of the parties, the following issues were framed :—

(1) Whether the reference is bad in law for the reasons mentioned in the preliminary objections 1 to 3 of the written statement ?
(2) As per reference.
(3) Relief.

5. Both the sides have led evidence.

6. I have heard the authorised representatives of both the sides and have also gone through the evidence on record.

ISSUE NO. 1 :

7. The authorised representative of the management did not press for findings on this issue during the course of arguments. This issue is thus, decided against the management and in favour of the workman.

ISSUE NO. 2 :

8. 3 witnesses have been examined by the management. MW-1 Mahesh Airen, Manager (P) deposed that the service conditions of the workman were governed by Certified Standings of the Company, a copy of which was Ex. M-1. Approximately 3500 workers were employed on regular basis. The casual workers are engaged for some time to cope with the target of production and in case of excessive absenteeism. The casual workers are paid on the daily attendance basis. The present workman was firstly appointed as casual labourer in the year 1983 through appointment letter Ex. M-3 on the basis of his application Ex. M-2. The workman had submitted application Ex. M-5 in the year 1985 and he was appointed for a period of 2 months through letter Ex. M-6 and he submitted joining report Ex. M-7. Then again the workman was appointed as helper in the year 1988 through letter Ex. M-8 and he had submitted his joining report Ex. M-9. At that time one Ratipal who was appointed as Tank Operator was suffering from mental sickness. Ratipal used to remain on leave for long period for treatment. So the present workman was appointed against his job and he continued upto 12th July, 1989. Ratipal had resumed duty in May 1989. The management had watched the working capacity of Ratipal for a period of 2 months. After being satisfied that Ratipal would be able to handle the job which was assigned to the present workman during the absence of Ratipal, the services of the present workman were dis-continued. In the end he stated that the management had submitted comments Ex. M-11 before the Labour-cum-Conciliation Officer on receipt of demand notice from the workman.

9. MW-2 Sandeep Wadhwa deposed that the workman was known to him as he had been working in their factory. The workman was engaged in the job of tailoring after leaving service of the copmany. The workman had got four sewing machines and 4 to 5 persons were also seen working with him in the beginning of year 1992. The income of the workman could be about Rs. 2,000—3,000 per month.

10. MW-3 Kailash Nath Passi deposed that the workman used to do sanding work in the Paint Shop of the factory as a casual helper. The workman was appointed on 17th February, 1988 through letter Ex. M-8 for a period of 3 months and he had submitted his joining report Ex. M-9. He further stated that one Ratipal was posted as Tank Operator in the Paint Shop but his mental condition was not sound and so risk was involved in getting the work of tank operator from Ratipal. Due to that reason Ratipal was assigned the job of sanding. Ratipal was regular in the beginning of the year 1988 but had been absent in April-May, 1988. In that situation the present workman was assigned the job of sanding which used to be done by Ratipal. In the end, he stated that the services of the workman were discontinued on the joining of Ratipal and after observing the work of Ratipal for two months that he will be able to do that job regularly.

11. On the other hand, the workman himself deposed facts mentioned above in his claim statement.

12. On the basis of aforesaid evidence, it has been submitted on behalf of the management that the workman admitted in his cross-examination that he was appointed on 17th February, 1988 through letter of appointment Ex. M-8 and had also submitted his joining report Ex. M-9. He also admitted that his wages were fixed at the rate of Rs. 23 per day and had been getting the wages at this rate during the period of his service. The workman also admitted that no letter was issued to him in writing to the effect that he

was made regular or permanent in the job. It is clearly mentioned in the appointment letter Ex. M-8 that the workman was being appointed as learner helper for a period of 3 months and his stipend/salary shall be Rs. 23 per day. It was also mentioned in this letter that during the period of his training, his services could be terminated by either side without assigning any reason and without any notice or payment of compensation in lieu of notice. It was also clearly and specially mentioned in this appointment letter that the performance of the workman would be under keen observation during the period of training and the same could be extended in the interest of learning, if agreed upon by him but on account of extension, the management was not bound to consider him for regularisation, since that was purely and temporary assignment. Beside this as deposed by the witnesses examined by the management, the workman was assigned the job of sander during the leave period of Ratipal, Tank Operator. The services of the workman were thus, terminated as per terms and conditions in the appointment letter and Certified Standing Orders. His case falls under the provision of sub clause (ii) of Sub-section 2(oo) of the Act. That being so the workman was not entitled to any retrenchment compensation under Section 25-F of the Act. Consequently, he is not entitled to the relief claimed by him particularly back wages as he has been engaged in the job of tailoring and has been earning sufficient amount.

13. On the other hand, it has been submitted on behalf of the workman that it is clear from the evidence led by the management that the workman was appointed firstly on 30th May, 1983 through appointment letter Ex. M-3 for a period of 2 months. Again he was offered appointment for 2 months through letter dated 18th February, 1985 Ex. M-6. Then again he was appointed through letter dated 17th February, 1988 Ex. M-8 for a period of 3 months as a learner helper. It is clear that the workman was never appointed as a learner or trainee and he was assigned of the job of regular sander. The alleged training period was not extended as per position mentioned in the appointment letter Ex. M-8. It is not disputed that the workman had rendered service for a continuous period of more than 240 days before the termination of his services. All these facts clearly show that the workman was regular employee of the management. His case did not fall under the provision of sub-clause (bb) of Section 2(oo) of the Act. The workman was entitled to retrenchment compensation which was not given to him. The persons junior to him were also working at the time of termination of his services. The impugned action of the management terminating the services of the workman is illegal and unjustified. Consequently, he is entitled to reinstatement. With regards to back wages it was stated that the workman had clearly stated on oath that he had been unemployed since the time of termination of his service. There is no dispute that the workman is a handicapped person and he is thus, entitled full back wages.

14. The term retrenchment is defined in section 2(oo) of the Act. In this connection it was held by the Hon'ble Supreme Court of India in the case between State Bank of India and N. Sundaramoney 1976 (1) LLJ 478 that whatever the reason, every termination spells out retrenchment. It was also held in this case that the termination embraces not merely the act of termination by the employer, but the fact of the termination, howsoever, produced. The contention of the employer that the order of appointment carried an automatic cessation of service was not accepted.

15. The Hon'ble Supreme Court of India again confirmed this position in the case between Santosh Gupta and State Bank of India 1980 (11) LLJ 72 and held that expression "retrenchment" must include every termination of the service of the workman by an act of the employer.

16. In the case between Puniab Land Development and Reclamation Corporation Ltd., Chandigarh and several others 1990 (2) LLJ 70, the Hon'ble Supreme Court of India held that the expression "retrenchment" means termination of services of the workman for any reason whatsoever, other than those expressly excluded by the definition in Section 2(oo) of the Act. It was also held in this case that the expression "retrenchment" does not mean only termination by the employer of the service of surplus labour for any reason whatsoever because the expression "retrenchment" is not to be understood in its narrow, natural and contextual meaning but is to be understood in its wider literal meaning to mean termination of service of workman for any reason whatsoever.

17. By Act No. 49 of 1984 the legislature stepped in and inserted clause (bb) to section 2(oo) which read as under :-

"Termination of service of the workman as a result of not renewal of the contract of employment between the

employer and the workman concerned on its expiry or of such contract being terminated under the stipulation in that behalf contained therein". It is obvious that the new provision inserted by clause (bb) excludes from retrenchment cases of (i) termination of service of a workman on account of non-renewal of contract of employment of its expiry and (ii) loss of service on the termination of contract of the employment in terms of the stipulation contained in such contract.

18. The evidence on record clearly shows that the present case does not fall in either of the two categories of cases mentioned in sub-clause (bb) of Section 2(oo) of the Act for the reasons hereinafter mentioned. The workman was appointed through letter dated 17th February, 1988 Ex. M-8 as a learner helper. It was also mentioned that the period of training shall be initally three months and it could be extended in the interest of learning with his consent. The management, however, did not extend the period of training or learning as envisaged in the appointment letter Ex. M-8. The workman was allowed to work for a continuous period of more than 240 days prior to the date of termination of service. Thus, it can not be taken that the services of the workman were terminated on account of non-renewal of contract of employment on its expiry or in terms of stipulation in the contract of employment.

19. It can not be disputed that the workman was governed by the certified standing orders of the company. Rule 23(2) of the certified standing orders of the company provides that no notice shall be necessary for the termination of services of a temporary employee but this provision shall not, however, absolve the management of their obligation to abide by the provisions of the Act or any other law for the time being in force for the termination of services by way of retrenchment or otherwise. The management was required to serve one month notice or pay one month's wages in lieu of notice before termination of services of the present workman under Section 25-F of the Act as he had completed 240 days continuous service prior to the date of termination of services. It was not done. The impugned order was not thus passed in confirmity with the certified Standing orders of the company.

20. It is not mentioned in the appointment letter that the workman was being appointed against the leave vacancy of Ratipal and his services could be terminated as and when Ratipal shall resume duty or will be assigned the duties which he used to perform before proceeding on leave. That being so, it can be held that the services of the workman were terminated in terms of the stipulation contained in the contract even if the evidence led by the management in this regard is accepted to be true.

21. It is thus evident from the position mentioned above that the termination of services of the workman was neither on account of non-renewal of contract of employment on its expiry nor due to loss of service on termination of the contract of employment in the terms of the stipulation contained in the letter of appointment.

22. It may also be added that the law laid down in the case of J. J. Shrimali, *v.* District Development Officer. Zila Panchayat and Others, 1989 Lab. I.C. 689 and M. Venugopal and the Divisional Manager, Life Insurance Corporation of India and another 1994 (68) FLR 443, is not applicable on the facts of the instant case as those cases related to the termination of services as per stipulations contained in the appointment letters.

23. It may also be noticed that it was clearly held in the case between R. Shriniwasan and Labour Court, Hyderabad 1990 (2) LLJ 577 that a case of discontinuous of casual labour on daily wages does not come within first part of clause 2(bb) of Section 2(oo) of the Act and that discontinuance of such casual labourer is retrenchment under section 2(oo). It was held by the Allahabad High Court in the case between Silendra Kumar *v.* Vice Chancellor, Allahabad University and anothers 1986 FLR 687 that the termination of services of a workman appointed on daily wages for a continuous period of 5 years will amount to retrenchment as the same did not fall under sub-clause 2(bb) of Section 2(oo) of the Act.

24. For the reasons recorded above, it is held that the termination of service of a workman without complying with the provision of Section 25-F of the Act is illegal and unjustified. The workman is entitled to be reinstated into service with continuity in service.

25. So far as the back wages are concerned the management has examined two witnesses to show that the workman has been engaged as a

tailor and he was earning about Rs. 2,000-3,000 per month. The workman has not led any evidence to contradict this position. His bald statement that he has been unemployed cannot be accepted as against the positive evidence led by the management. Moreover on 5th May, 1994 the management submitted an application that if the workman is unemployed and is interested to work on the same basis as before he may confirm so that necessary instructions could be issued regarding his posting. He made statement that he was willing to resume duty only if he was taken as regular employee and was also paid back wages. This position shows that the workman was gainfully employed and was not interested in immediate employment in the factory. In these circumstances, it appears proper to allow 25 per cent of the back wages to the workman. Issue No. 2 is decided against the management and in favour of the workman in these terms.

26. ISSUE NO. 3 RELIEF :

In view of my findings on the above issues, it is held that the termination of service of the workman by the management is illegal and unjustified. The workman is entitled to be reinstated into service with continuity in service and 25 per cent of back wages. The award is passed accordingly.

U. B. KHANDUJA,

The 15th June, 1994.

Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No. 2366, dated 29th June, 1994.

A copy is forwarded to the following :--

1. Labour Commissioner, Haryana, Chandigarh.

2. Labour Officer, Ballabgarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

No. 14/13/87-6Lab./463.— In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Director Local Body Chandigarh *versus* Gulshan Kumar.

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 125 of 1991

between

SHRI GULSHAN KUMAR S/O SHRI RAMJI DASS, VILL AND P.O. KAHNAUR DISTT. ROHTAK--WORKMAN

and

THE MANAGEMENT OF M/S (I) DIRECTOR, LOCAL BODIES, SECTOR-8, HARYANA, CHANDIGARH. (2) PRESIDENT, MUNICIPAL COMMITTEE KHARKHODA (SONEPAT).

Present :

Shri S.S. Gupta, A.R. for the workman.

Shri S.C. Verma, A.D.A. for the management.

AWARD

In exercise of powers conferred by sub-clause (c) subsection (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication, *vide* Labour Department Endst. No. SOV/Soni/65 91/17826-32, dated the 29th October, 1991 :

Whether the termination of services of Sh. Gulshan Kumar is justified and in order ? If not, to what relief he is entitled ?

2. The workman and the management were summoned. The workman appeared and filed his claim statement that he was appointed by respondent No. 1 as a Clerk,—*vide* order dated 29th April, 1985 with the posting order with Municipal Committee, Hissar. The work and conduct of the workman remained satisfactory; the work on which, the workman was appointed was of a permanant nature, but the workman was kept of *ad hoc* basis with a view to hire and fire at their sweet will; the respondent No. 1 posted the workman respondent No. 2 and as such the workman worked with respondent No. 2 upto August, 1986, that after August, 1986 the workman was told by the concerned official of respondent No. 2 that his services are no longer required but if the desired he can come on duty and the case for sanction of post will be sent to the Government. On this assurance the workman worked upto September, 1989 but wages were not paid to him as no sanction from the Government received by that time; the workman remained in the employment in the hope of sanction from the Government and rare opportunity of employment. At the time of alleged termination in 1986 retrenchment compensation was not paid as such the alleged order,—*vide ab initio*; the alleged order tantamount to retrenchment but the same is illegal being affecting against the provisions of section 25-G, of the I.D. Act, 1947. Hence this reference petition is filed that he be reinstated with continuity of service and full back wages.

3. The management appeared and filed the reply of the claim statement that the applicant was appointed on 4th May, 1958 as registration clerk on daily wages @ Rs. 23 per day for a specific period upto 28th February, 1986; that the post was neither permanent one nor he was appointed on *ad hoc* basis, however, he was engaged on daily wages basis @ Rs. 23 per day against purely temporary post sanctioned by the Government, upto 28th February, 1986 for a specific job of delimitaiion of wards and preparation of rolls of various municipal committees in the State of Haryana for election purpose; the Deputy Commissioners were directed to absorb these employees subject to the availability of posts,—*vide* this office letter No. DLB-3A-86/8516—27, dated 3rd March, 1986; that no representation was ever filed by the applicant to the answering respondent before approaching the Labour Court; the action of the respondent is not in any way illegal, unjustified and against the principles of natural justice. It is also submitted that a CWP No. 5825 of 1989 (Ram Kumar V/s. State of Haryana) filed by one Shri Ram Kumar Ex-registration clerk whose services were terminated on 28th February, 1986 alongwith Shri Gulshan Kumar with having similar facts and circumstances of this case has already been dismissed by the Hon'ble Punjab and Haryana High Court on 7th September, 1989. Hence claim statement be dismissed with costs.

4. Replication was filed. On the pleading of the parties, the following issue is framed:

(1) As per terms of reference ?

5. My findings on the above issue with reasons thereof is as under: -

Issue No. 1

6. The workman has come into witness box as WW-1 and closed his evidence. The management has examined MW-1 Shri Satish Kumar and also examined Shri Zora Singh as MW-2 and closed the evidence.

7. The learned A.D.A. for the respondent made the contention that Shri Gulshan Kumar wa posted for specific post and for specific period and when the work was over his services were nos longer required and he was terminated from the service. As the applicant was appointed as clerk,—*vide* order dated 29th April, 1982 and the respondent was firstly posted in the Local Bodies, Haryana, Chandigarh and later on he was transferred in the Municipal Committee, Kharkhoda if the workman was transferred the case becomes clear that he was not afreshly appointed with the respondent No. 2 and appointed with respondent No. 1 continued to respondent No. 2 and count to period as to whether he worked for total period of 240 days with the respondent or not.

8. The workman/applicant was working with the respondent No. 1 w.e.f. 29th April, 1982 and he worked upto September, 1989. The workman was working the respondent No. 2 in August, 1986 that his services are no longer required and he could come on duty. The case for sanction of the post sent to the Government and on that assurance he worked upto September, 1989.

9. The reply of the management of claim is that he was appointed on 4th May, 1985 as clerk on daily wages for specific period upto 28th Feburary, 1986 and as the Deputy Commissioner's were directed to observe those employee subject of the availability of the post and no representation was filed by the applicant to the respondent and he was not appointed further. The case of the respondent is that one worker namely Shri Ram Kumar Ex-Registration Clerk whose services were terminated on 28th Feburary, 1986 alongwith Shri Gulshan Kumar was dismissed by the Punjab and Haryana High Court on 7th September, 1989.

10. The learned authorised representative for the workman Mr. S. S. Gupta made the contention that writ petition filed by Shri Ram Kumar was dismissed *in limine* and not on merits and hence no binding effect on this case. The workman Gulshan Kumar has made statement that he was appointed in March, 1985 and removed from job on September, 1989. Satish Kumar who come to witness box as MW-1 made statement that the applicant was appointed on the order of Deputy Commissioner. Mr. Satish Kumar had not brought in the Court the order of termination of services of the workman and he could not tell that after removal of the workman some other person were appointed or not. He also could not tell as to how many days the workman has worked in the month of April to July, 1987. He also could not tell whether the applicant had been coming to his duty.

11. Ex. M-1 letter written by the workman to the respondent showing that the applicant is taking charge of new duty on the date of 4th May, 1985 and this letter is signed by the officer on 5th May, 1985.

12. MW-2 Shri Zora Singh has made statement that Ram Kumar had also filed the writ petition in the High Court for made regular employee but his writ petition was dismissed. It is proved from evidence on the record as the applicant had worked with the respondent from May, 1985 to February, 1986 and thus proved that the applicant had worked for about nine months and that comes to more than 240 days in a year. It is thus proved that the workman had been worked for more than 240 days, the services were to be brought to an end as according to section 25-F which has not been done so and hence I am of the view that as the woakman has completed 240 days and services has not been finsihed as accorded under section 25-F, so he is liable to be continued on the job. I thus hold that the reference of the workman is maintainable. I directed the respondent to give employment from the date he was removed from the job but with 20% back wages. The reference is answered and returned accordingly, with no orders as to costs.

P. L. KHANDUJA,

Dated the 22nd August, 1994

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Rohtak.

Endst. No. 125-91/2037, dated the 23rd August, 1994

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Rohtak.

The 29th September, 1994

No. 14/13/87-6 Lab./522.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad in respect of the dispute between the workman and the management of M/s Topaza Overseas Pvt. Ltd., Faridabad *Versus* Prabhu Dayal :-

BEFORE SH. N. L. PRUTHI, PRESIDING OFFICER, INDUSTRIAL TRAIBUNAL-CUM-LABOUR COURT-I, FARIDABAD

Ref. No. 140 of 1986

IN THE MATTER OF INDUSTRIAL DISPUTE

between

SH. PRABHU DAYAL C/O B.M.S. VISHWAKARMA BHAVAN, NEELAM BATA ROAD, FARIDABAD .. *Workman*

and

M/S TOPAZA OVERASEAS PVT. LTD., INDUSTRIAL AREA, FARIDABAD .. *Management*

Present :

Sh. Gope Masih, AR for the workman.

Sh. J. S. Saroha, AR for the Management.

AWARD

Under the provision of Section 10(1)(d) of Industrial Disputes Act, 1947, the Govt. of Haryana have,— *vide* Endorsement No. OV/FD/142-86/46668-73, dated 11th December, 1986 referred the following dispute between the parties above mentioned for adjudication :—

"Whether of the order Management to terminate the services of Sh. Prabhu Dayal is legal and justified. If not, what relief he is entitled to ?"

2. The case of the workman is that he had been working as Supervisor with the Management since the year 1977 and his last drawn wages were Rs. 700/- p.m. That with effect from 12th June, 1986 he was not taken on duty without there being any reason for the same. His further case is that when he had appeared before the Conciliation Officer on 11th June, 1986 he had clarified that he was not a contractor and that the Management had got a false registration his contractor-ship done in his name because he was only a worker and was holding ESI card and Provident Fund Number. It is on these facts that the workman has claimed his reinstatement with continuity of service and payment of back wages.

3. The case of the Management is that the claimant was never engaged by it as its employee. Rather, he was an independent contractor and entrusted with the execution of certain jobs on contract basis. He was free to employ any number of persons to execute the contract and used to maintain attndance and wages register of the persons employed by him. Further case of the Management is that the Claimant was raising regular monthly bills for the job work done by him and his company had also get itself registered under the contract labour regulation. Abolition Act, 1970 and his name is also registered with the Labour Department Haryana as a contractor.Therfore, he could not be workman as defined in the Industrial Disputes Act, 1947 and for that matter did not exist relationship of employer and employee between the two for that matter there did not arise the question of termination of the services of the claimant. Accoring to the Management, the claimant used to book his own salary for account purposes, for that reason, he was contributing towards ESI Scheme and Provident Fund purposes for himself and his own employees through the Management which was the principal employer. So, from the point of view of the Management, the reference is bad in law and the claimant is not entitled to any relief.

4. In the rejoinder, pleas taken in the claim statement have been reiterated while those in the written statement controverted. On the pleadings of the parties, following issues were framed on 5th April, 1988 :

(1) Whether there does not exist relationship of employer & employee between the parties ?OPM

(2) Whether the reference is bad in law ? OPM

(3) As per refernce ? OPM

5. For the case of Management, four witnesses, namely Liaqat Ali (MW-1) Prem Kumar (MW-2) Khurshid Ahamad (MW-3) and V. P. Singh (MW-4) have been examined. No witness has been produced by the workman. Even workman himself who had appeared as a witness in a similar case of one Baldev Raj bearing No. 141 of 86 did not bother to appear himself or to produce Baldev Raj in his case.

6. I have heard AR for the parties and perused material facts on record. My findings on each of the issues with reasons therefor are as under :—

Issue No. 1 :

7. V.P. Singh, Administrative Officer of the Management examined as MW-4 stated that the claimant Prabhu Dayal, used to do welding work for the Management on contract basis under the name and style of M/s Prabhu Dayal Badru Din registered under contract Act. The witness had placed on record Ex. M-1, bill for the work done and Ex. M-2 receipt of payment of the above said bill. The witness stated also that he attestified the signatures of Contractor Prabhu Dayal at point 'A' on bill Ex. M-1 and receipt Ex. M-2. He also identified signatures at point 'A' on Ex- M-3 cash voucher of Bradrudin partner of Prabhu Dayal. The witness also proved Ex. M-4 to M-30 bills and payment receipts bearing signatures of Prabhu Dayal. According to the witness the contractor had given application Ex. M-32 for enhancement of rates. The same were increased *vide* letter Ex. M-31. The other documents proved by the witness are Ex. M-33 regarding registration of Contractorship under contract act, Ex. M-34 to M-43 copies of attendance register had Ex. M-44 to M-50 copies of wages register maintained by the Contractor. Ex. M-32 is copy of complaint which the contractor had made to the Management not to allow entry to some of his employees named in the complaint as were not performing their duties properly.

8. Prem Kumar examined as MW-2 stated the same facts as have been revealed by MW-4 V.P. Singh. He, too has proved copies of attendance register and copies of wages register being maintained by P.D. Contractors. Accordingly to this witness, there was one more contractor, namely Baldev Raj (B.D.

Contractor), working with the Management and that both the contractors used to recruit their own workers, pay them wages, decide their complaints, and take disciplinary action against them. According to this witness as well the claimant contractor used to raise bill in respect of the work done by him and was made payment in cash as also by menas of a cheque and that he identifies thereon signatures of the claimant as contractor.

8. Liaqat Ali, Asstt., Foreman, examined as MW-1 stated that claimant Prabhu Dayal was a contractor and was doing welding etc. and had employed 6-7 employees and that he had himself been sowing the claimant making payment of wages to his workers.

9. Khurshid Ahmad, Foreman examined as MW-3 stated that claimant Prabhu Dayal was doing fabrication work for the company on contract basis and had employed 7-8 workers who used to work in a seprate shed within the premises of the company and it was contractor's own function to recruit his employees, terminate them or take any disciplinary action against them. According to this witness also, the claimant who was a contractor and not an employees of the company used to give bills for the job work done and was made payment in respect thereof.

10. Oral and documentary evidence led by the Management and in particular, bills and vouchers and application for revising rates of job work, and acceptance thereof, leave one in no manner of doubt that Prabhu Dayal was a contractor and not an employee of the company. If he was showing his name in the wages register kept by him and receiving monthly wages for account purposes or was contributing towards ESI or Provident Fund for himself or his workers through the Principal employer, these do not at all prove his case of being an employee which fact has through over whelming evidence been disproved on record. Therefore, holding that Prabhu Dayal was a contractor and there did not exist relationsip of employer and employee between the two, I decide this issue in favour of the management and against the workman.

Issue No. 2 :

11. The onus of proof of the issue was placed on the Management. This issue was not pressed during the course of arguments. This issue is thus decided against the Management and in favour of the workman.

Issue No. 3 :

12. When it is proved under Issue No. 1 that there did not exist relationship of employer and employee between the two, there does not arise the question of termination of services of the claimant and for that matter he is not entitled to any relief. An award is passed accordingly.

N. L. PRUTHI,

Preisding Officer,
Industrial Tribunal-Cum-
Labour Court-I, Faridabad,

The 12th August, 1994.

Endorsement No. 3319, dated 12th August, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner & Secretary to Govt. Haryana, Labour Department, Chandigarh.

N. L. PRUTHI,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court-I, Faridabad.

No. 14/13/87-6Lab./531.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947(Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad in respect of the dispute between the workman and the management of M/s. Kumar Castings, Faridabad *versus* Subeddar.

BEFORE SHRI N.L. PRUTHI, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, FARIDABAD

Reference No. 244 of 1990

IN THE MATTER OF INDUSTRIAL DISPUTE

between

SHRI SUBEDAR, CARE OF I.F.T.U., G-162, INDIRA NAGAR, SECTOR-7, FARIDABAD .. *Workman*

And

M/S. KUMAR CASTINGS, PLOT NO. 198, SECTOR-24, FARIDABAD .. *Management*

Present :

Shri Jawahar Lal, Authorised Representative for the workman.
Management, *Ex parte.*

AWARD

Under the provisions of Section 10(1)(d) of Industrial Disputes Act, 1947, the Government of Haryana have,—*vide* Endorsement No. OV/FD/113-90/36672-77, dated 14th September, 1990, referred the following dispute between the parties above named for adjudication :—

"Whether Shri Subedar had tendered resignation and collected his full and final dues or his services were terminated and if so to what relief is he entitled ?"

2. The case of the workman is that he had been working with the Management since 2nd January, 1986 as Helper and his last drawn wages were Rs. 550 per month. That when the workers union of which he was a member had made a demand of payment of minimum wages and other legal facilities, the management got annoyed and terminated his services on 27th January 1990 without any notice and without following the provisions of section 25-F and Industrial Disputes Act. He is also alleged to have reported the matter to the Labour Inspector but despite that the Management did not take him back into service. It is on these facts that the workman has claimed his reinstatement with continuity of service and full back wages.

3. In the written statement filed by the Management stand taken is that the workman had himself left the job by submitting resignation on 25th January, 1990 and collected his dues in full and final settlement on 7th February, 1990 and, as such, he is estopped from claiming any further amount. It has been denied that the workman was employed as Helper w.e.f. 2nd January, 1986 or that the workman was victimised for his trade union activities as there does not exist any union of the workers of the factory.

4. In the rejoinder, pleas taken in the claim petition have been reiterated while those in the written statement controverted,. On the pleadings of the parties following issues were framed 29th August, 1991 :—

1. As per reference. OPP
2. Whether there does not exist any dispute between the parties ? OPM
3. Whether the workman has taken full and final settlement from the Management ? OPM
4. Whether the reference is bad in law ?

5. No evidence has been led by the Management despite availing of opportunities. Instead of leading any evidence, the Management had chosen to withdraw itself from the proceedings and was proceeded *ex-parte* on 25th July, 1994. The workman has been examined as WW-1.

6. I have heard Authorised Representative for the workman and perused the facts on record. My findings on each of the issues with reasons therefor are as under :

Issue No. 2 and 4

7. The onus of proof of these issues has been placed on the Management. No evidence has been led by the Management to show at to how there does not exist any industrial dispute and for what reason the reference is bad in law. Therefore, both these issues are decided against the Management and in favour of the workman.

Issue No. 3

8. The workman examined as WW-1 stated that his services were terminated on 27th January, 1990 without paying him any compensation. In the claim statement, he had denied having received any amount but admitted that during the course of service., his signatures were obtained on some of the blank papers vouchers. No evidence has been led by the Management to show that the workman had himself resigned the job or had collected his full and final dues. So, in the absence thereof the pleas raised by the workman have to be accepted. So, holding that the workman had not taken his full and final payment this issue is decided against the Management and in favour of workman.

Issue No. 1 :—

9. The Management has not led any evidence to prove that the workman himself resigned from services and had collected his full and final dues. Rather, it has been proved by the workman that his services were terminated in an illegal manner. on 27th January, 1990 without paying him any compensation. Therefore, an award passed that workman subedar had neither tendered resignation nor collected his full and final dues and that his termination being illegal, he is entitled to be reinstated with continuity of service and full back wages.

N. L. PRUTHI,

The 17th August, 1994.

Presiding Officer,
Industrial Tribunal-cum-Labour
Court-I, Faridabad.

Endorsement No. 3366, dated the 23rd August, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner Secretary Government, Haryana, Labour Department, Chandigarh.

N. L. PRUTHI,

Presiding Officer,
Industrial Tribunal-Cum-
Labour Court-I, Faridabad.